

# **1. INTRODUCTION AND STATEMENT OF THE PROBLEM**

Violence against women is so widespread in the country that it may be regarded as endemic to South African life (Strebel & Foster, 2000:11; Vogelmann & Eagle, 1991:1). Recent research reveals that the personal relationships of many adolescent women are bound up with violence and coercion (Strebel & Foster, 2000:11). Although considerable research has been done on violence against women and more specifically the sexual victimisation of women, relatively few studies have been conducted in respect of the situation in tertiary institutions.

Such studies have been prompted by the rising fear that these institutions are not ivory towers but, instead are now hosts to a variety of criminal activities (Fisher, Cullen & Turner, 2000:1). It is also noteworthy that large concentrations of young women come into contact with young men in a variety of public and private settings at various times on campuses. Thus, for the average female student, the campus is no longer a safe haven as she could be exposed to crimes such as rape, attempted rape, sexual assault and sexual harassment on a daily basis (Osborne, 1990:658). Female students, might therefore, be a group whose victimisation warrants special attention.

The focus of the study will be female students as victims of two forms of sexual victimisation on the campus of the University of Venda, namely sexual harassment and rape. In order to place the study into contextual perspective, a historical overview of the changing position of women in society will first be given. Thereafter, certain concepts that underlie the research will be operationally defined. The need for this study will be highlighted whereafter the aims will be outlined.

## **1.1 HISTORICAL PERSPECTIVE**

According to Gates and Chapman (1978:112) the historical roots of violence against women are ancient and deep. The emergence of the first primitive

societies contributed to the subordinate position of the woman where her sole purpose was to satisfy her husband's lust, bear his children and tend to household chores. In support of this view, Bebel (1988:1) states that oppression appears to have been the common lot of women from the beginning of recorded history.

Vogelman (1990:23) contends that violence against women must be considered within the context of patriarchy and the social control of women. The reason for this is that in patriarchal societies structures are essentially oppressive and allow women limited independence. Dobash and Dobash (1992:11) explain that since male power dominates most male-female relationships, women are ultimately reduced to social dependency as subjects to males. Therefore, societies organised around such relations may give legitimacy to violence against women. In these societies violence may not only be confined to physical abuse. In fact, this violence may also manifest as emotional abuse through threats and reprisals, exploitation, discrimination, or other forms of control and coercion. Although oppression, the subordinate position of women and patriarchal practices are not the only reasons for violence against women, Bebel (1988:1) and Vogelmann (1990:23) argue that it is often against this background that many women become victims of violence.

Early in history, the institution of marriage was closely supported by patriarchal attitudes that defined the male as an authoritarian figure who had responsibility of controlling the woman (Johnson & Sigler, 1997:5; Dean & Be Bruyn, 1982:18). Prior to marriage, the woman was perceived to be the property of her father or male guardian. This ownership was transferred to the husband when the woman married. The woman's role in society was defined in terms of her ability to function in a subservient position and to procreate. This perception of the woman facilitated the historical view of rape as a property crime instead of a personal or violent crime. Thus, a man could take possession of a woman, rape her and bring her into the tribe as his property or wife (Johnson & Sigler, 1997:6).

In primaeval German society, the practice of bride purchase was common. In this

particular society, a marriageable girl was put up for bid by her father or male guardian. Marriage was characterised by abduction, forcible rape of women as well as the auction of women to the highest bidder. Rape was also viewed as an act of theft or seizure of property from the victim's father and there were no laws against rape and other forms of sexual assault (Dean & De Bruyn, 1982:18). A man who wanted a sexual companion simply carried a woman away by force so that she could always be available for his own sexual needs. Women somehow benefited from this arrangement because the woman came under a man's protection and was therefore no longer a target for those who were hunting them for sexual purposes. A more detailed consideration of the position of women in primaeval times is given in the following section.

### **1.1.1 THE POSITION OF WOMEN IN PRIMAEVAL TIMES**

In primeval times, women were regarded as inferior to men particularly during pregnancy and child rearing because they were physically at a disadvantage in terms of such activities as hunting and warfare. This forced them to look to men for assistance and support. It was a time when physical strength was very highly esteemed and the struggle for survival was at its most brutal and savage form. Physical superiority and male dominance was easy to sustain and according to Bebel (1988:8) it may represent the origins of many forms of violence against females. Such was the low esteem accorded to women that many female children were killed soon after birth. Those who showed signs of strong physical character were allowed to live for procreative purposes (Milton & Butchell, 1991:437). This was done in order to avoid a disproportionately higher number of women. It was also considered cheaper to simply capture mature women for use in times of war than to bring them up from infancy. With time such male views and treatment of women became tradition. Some of the resulting consequences are explored in the next section.

#### **1.1.1.1 Male-female relationships**

At first and for a considerable length of time, no lasting union existed between men and women. Women were the property of the tribe, without the right of

choice or refusal of mates. However, while apparently women had no recognised rights as individuals, the mother's right of property concerning the child (gynaecocracy) was long maintained among certain tribes such as the Lydians.

Bebel (1988:10) asserts that although men arrogated supreme powers to themselves, with individual men obliging women to associate only with them, such demands somehow obliged men to protect such women and bring up any resulting children as their own. These early arrangements among men and women are considered the beginning of more formal male-female or husband-wife relationships, which provided better security to the woman than her former position as tribal property.

Such male-female relationships also carried a division of labour. According to Bebel (1988:11) men hunted, fished and fought while women attended to housework and child rearing. The children grew up and in turn procreated which gave rise to a family, community and eventually the tribe. The tribe in turn was divided into smaller clans. Women had their own part to play as they were considered men's servants. They were not only responsible for taking care of the children and household chores, but also had to make clothing and build huts or make tents when necessary.

Men, having grown accustomed to rule, enforced total estrangement of women from other men. Women were obliged to retire from men's presence and to confine themselves to spaces assigned to them in the hut. They were also obliged to veil themselves to avoid tempting lustful neighbours.

The evolving master-servant relationship between men and women had important consequences. The woman, for example, was no longer a mere object of sexual gratification as was the case in the tribe. She had now become the bearer of heirs through whom the man continued his lineage after death. This meant that women began to represent something of distinct value and consequently became a much sought-after article of exchange which men had to

obtain through bargaining. In exchange, the father of the woman or bride received articles like cattle, game and/or fruits of the field. The virgin girl, in leaving her father's house, broke off all ties with her father. It can therefore be deduced that the lives of women were divided into two entirely separate parts namely, the first in the parental home and the second in that of their husband and master (Bebel, 1988:13). The effect of this, however, was that women became as much the property of men as any other possession which he could dispose of at his pleasure, retain or cast off, ill-treat or protect.

#### **1.1.1.2 Right to land and inheritance**

In primaeval times, land was communally owned with the proviso that while wood and water belonged to all, the part assigned for agriculture was separated into lots and divided among the heads of the families. According to Bebel (1988:13) the arrangement regarding land ownership reinforced the status of women as second-rate beings because as a rule, females were entirely excluded from participation in the lots. Only the sons received a share and it can be expected that under such circumstances the father would regard the birth of a son with more satisfaction than that of a daughter (Crump, 1987:21).

#### **1.1.1.3 Prostitution**

Although men throughout the world demanded from their wives strict sexual reserve with regard to other men (and have frequently chastised transgression of this rule by the cruellest forms of punishment), men were by no means inclined to subject themselves to similar restraints (Bebel, 1988:15-18). A man could in primaeval times, purchase two wives or as a victor in the battle, capture women from the conquered. Men who were absent from home because they were engaged in war or on a journey felt no restraint in indulging in new sexual relationships. An unmarried woman, widows, cast-off wives or wives of the poor who offered themselves as prostitutes helped to satisfy this indulgence. These prostitutes were paid in turn for providing or delivering sexual favours (Bebel, 1988:18).

## **1.1.2 THE POSITION OF WOMEN IN THE ANCIENT KINGDOMS**

According to Crump (1987:22) women in the ancient kingdoms were also subordinate to men. The position of women in various kingdoms such as Babylon, Egypt, Rome and Greece will be scrutinised next.

### **1.1.2.1 Women in Babylon**

In Babylon, which existed between 2000 to 1500 BC, women possessed rights that they had gained in a previous more enlightened era. For example, they enjoyed the right to inheritance alongside sons and brothers. Furthermore, upon the death of the husband or after a divorce, a woman was entitled to marry another man (Crump, 1987:22).

However, according to Crump (1988:18) nothing was sacred about marriage in this kingdom. Marriage was more of a secular agreement than a religious or moral commitment. It was contracted by a man, or if he was a minor, by his father. The liberty to terminate the marriage at will, without offering any reason, was the prerogative of the husband alone. Upon such decision, he was required to give his wife money to the value of the bridal gift. A woman could not, on the other hand, divorce her husband without bringing the matter to a court of law. During the divorce proceedings, a wife had to prove behaviour on the part of the husband, which resulted in her seeking divorce.

Hammurabi, a Babylonian King, who ruled from 1795 to 1750 BC, constructed intricate laws called the Code of Hammurabi. These laws dealt with all aspects of Babylonian life, including marriage and divorce. Hammurabi's divorce laws were almost as complicated as divorce laws today (Packer, Merrill & White, 1980:434). A look at some of its laws relating to women reveals much about the status of women in Babylonian culture. A Babylonian husband, for instance, had the power to divorce his wife by simply saying to her that, "thou art not my wife", or that "I had left" or "divorced you" where after he had to give her leaving or divorce money. The statement "I had cut the fringe of her garment" was also used. Since a garment often symbolised the person who wore it, this meant that

the husband had “cut” his marriage to his wife (Dean & De Bruyn, 1982:18; Hurley, 1981:23). As noted above, a husband could thus divorce his wife almost at will and his words were considered a legal divorce decree (Packer et al., 1980:424).

However, a woman could in turn never start divorce proceedings. She had to wait for the husband to make an application to the court. If a woman could not prove her innocence and/or her husband’s guilt, she was drowned. This resulted in a woman seeking divorce only in extreme cases. If the court ruled that the husband was at fault, the man had to give up the wife’s dowry, which often constituted a large proportion of his property. Furthermore, should the husband have been found to be the guilty party, the wife incurred no punishment for her refusal of conjugal rights and could return to her father’s house.

Cases of infidelity within marriage also focused on the wife (Hurley, 1981:24). An illegal sexual relation with a married woman was viewed as a capital offence. Furthermore, the Babylonians considered a married woman who was raped to be guilty of adultery. They usually bound her to the rapist and threw them into the river (Brownmiller, 1975:19). Consensual adultery resulted in the drowning of both partners, unless the husband chose to spare the partner in which case the King also spared the man involved (MacQueen, 1964:75).

### **1.1.2.2 Women in Egypt**

According to Crump (1987:24), the Egyptian society (1546-1319 BC) was matriarchal and inheritance passed through the female lineage. In Egypt, girls were permitted to earn their marriage position by prostitution. For example, Cheops, one of the Kings of Egypt covered the cost of building a pyramid with the sums of money earned by the prostitution of his daughter (Bebel, 1988:19). Another habit, which existed, was that of showing hospitality to a male guest by giving him one’s wife or daughter for the night.

### 1.1.2.3 Women in Greece

Greek civilisation in the fourth and fifth centuries BC was an age when the status of women reached one of the lowest points in the recorded history of Western civilisation (Crump, 1987:23). Females whose main purpose of existence was to produce and rear children, were hidden in gynaeceia which were usually an inaccessible retreat in the upper part of the home. Van der Walt (1988:22) asserts that women were regarded as being little more or better than livestock. They were regarded as a means of procreation and their duty was to produce ideal citizens (Evans, 1983:36).

Prostitution and homosexuality were also permitted. Bebel (1988:19) points out that the public brothels in Greece were established at an early date. Solon, a Grecian King, introduced them as state institutions into Athens around 594 BC, which caused a contemporary to sing his praise in the following manner:

Solon be extolled! For thou hast public women for the safety of the town, for the morals of a town filled with strong young men, but for thy wise institutions would have given themselves up to the annoyance and pursuit of women in upper classes.

However, when women turned to prostitution and homosexuality, it was regarded as degrading or criminal. Solon also decreed that married women who had intercourse with a lover should atone for the indiscretion by losing her freedom for life. This meant that her husband had the right to sell her as a slave (Witherington, 1990:10).

Lerner (1986:117) states that the sexual victimisation of females (specifically rape) was seen to have no devastating effects or consequences on the victim. In the case of rape, the victim was forced to marry the rapist in order to protect the value of the woman as dowry. Where the rapist already had a wife, the innocent wife would be chased out of the family house and often forced to become a prostitute. In other words, women were treated as usable and disposable objects

for male pleasure.

According to Witherington (1990:10) there were three categories of women in Greece, namely, the concubines, the Athenian citizens and the companions.

- **Concubines**

The concubines constituted the smallest category and were grouped with persons of the lowest status in society. Their main function was to attend to personal needs, especially the sexual requirements of males. The availability of these women meant that a male citizen could limit his legitimate heirs without limiting his sexual activities at the same time.

- **Athenian citizens**

As early as the fifth century BC in Athens, a woman of the upper class was free in name but not in status and role. This meant that in spite of her upper class status, she was not allowed to vote, sign contracts or settle any business transactions. She was allowed only to perform and participate in so-called feminine activities, which in many cases included physically demanding work such as weaving, spinning, cloth dyeing and raising children. The wife was just an apparatus for bearing children and even viewed as a faithful dog that watched the house. In contrast with this, the master of the house lived according to his own pleasure (Witherington, 1990:10).

In Athenian society, rape of a married woman as compared to seduction was consequently perceived as a lesser offence. In fact, seduction was considered a more serious offence because it was viewed as a premeditated act involving a lasting sexual relationship whereby the seducer gained access to the husband's household. In cases of seduction, the aggrieved husband had the right to kill the seducer. If he chose not to exercise this right, he could seek other forms of revenge, particularly those that involved subjecting the offender to humiliating acts in public, such as nudity (Bebel, 1988:21).

The husband of a victim of rape was required by law to divorce his wife even

though the wife might be considered innocent. Once she became a divorcee, the woman had no opportunity to prove her innocence and she became an outcast from society. Lack of consent to rape was not a relevant factor or acceptable defence. Rather, what counted most was that if the wife has engaged in sexual intercourse with another man regardless of whether or not it was forced upon her, the husband's status was lost (Johnson & Sigler, 1997:9).

- **Companions**

Women in this category had the greatest freedom among women in ancient Greece and earned a great deal of respect for their services. Their role in society included participation in festivals involving sacrifices to gods and goddesses. They were particularly honoured and respected for the role they played in religious activities.

#### **1.1.2.4 Women in Rome**

At the time of establishing the city of Rome around 450 B.C., Roman women possessed no rights (Bebel, 1982:22). Their position was as abject as that of the women in Greece. It was not until the Roman empire had grown large, powerful and the Roman patricians had become wealthy, that women's position gradually changed. It was mainly during the first century BC that women obtained greater social status as a result of the liberal atmosphere that was brought about by the material wealth that abounded during that particular time. They enjoyed far greater liberty and social responsibility than the Athenian women.

Roman wives had economic rights, the right to divorce, the right to own property as well as inheritance rights and were allowed to conduct themselves almost as independently as men (Crump, 1987:23). However, she remained a minor and could dispose of nothing without the consent of her guardian, who was either her father or upon death of her father, a male relative (Bebel, 1988:22). Thus, in spite of the gains women made in acquiring certain rights, men remained the proprietors of women under Roman law. This reflected a deep-seated belief held by men that women essentially had no will of their own and therefore needed the

guiding hand of a father, husband or male relative.

Due to the fact that the practices used in the past serve as the basis for defining the place or role of women in the contemporary world religions today, it is also important to take cognisance of the position of women in the prevailing or dominant religions of the world.

### **1.1.3 TRADITIONAL POSITION OF WOMEN IN THE WORLD'S MAJOR RELIGIONS**

In addition to being a vital component of a people's culture, religion represents for its adherents an embodiment of divine wisdom and truth and therefore provides guidance in the conduct of human affairs. Thus, even though there might be more liberalism in religious observance today, the traditional view of women in these religions is bound to have contributed to present-day society's perceptions of women (Rikyard, 2000:1). The role of women in the religious communities of Hinduism, Judaism, Christianity and Islam will be explored next.

#### **1.1.3.1 Hinduism**

According to Bonvillain (1998:227-228) the fundamental doctrines of Hinduism prevalent in the Near East share the underlying theme of the possibility of contamination from women especially those related to sexuality. Important concerns in Hinduism are issues of purity, dangers of pollution and deity.

Contact with women's bodies during their biological reproduction period was said to be potentially contaminating to Hindu men (Bonvillain, 1998:227-228). Menstrual blood was considered to be a highly spiritually polluting substance. Therefore, women were strictly secluded from religious activities, ceremonies or rituals during their menstrual periods (Rikyard, 2000:1). Menstruating women also had to remain in a separate porch or room in the residence and to refrain from handling food or clothing or any other objects that might come into contact with her. Their bodies were also said to be contaminating to their children, which resulted in them being separated from their children at such times. The only

exception was in the case of a nursing mother. The reason for this exception was that mother's milk was considered a purifying substance.

While on the one hand Hindu beliefs symbolise dangers derived from women's sexuality, they also present, on the other hand positive, protective and life sustaining images of women through goddesses (Bonvillain, 1998:230). Deities or divinities were not representations of people, even though they had attributes of human personalities. Gods and goddesses were symbols of "universal cosmic essence" (Bonvillain, 1998:231). As married couples, they represented the dual nature of existence namely male and female. Most Hindu deities, whether male or female, were thought of as composites of a variety of attributes or aspects. In one form, they could be helpful, in another, they were cruel and vengeful.

The goddesses, in their more benevolent and helpful way were depicted as faithful wives. Dangerous, vengeful goddesses however, were viewed as being unmarried. This distinction implied that men controlled women's sexuality and this ideal was also reflected in marriage. These perceptions tended to reflect or reinforce negative attitudes towards women particularly when they appeared independent and failed to conform to the ideal of subordination to male authority.

### **1.1.3.2 Judaism**

Traditionally, a high regard was placed on marriage in Judaism. However, this appreciation of marriage appeared to be at the expense of women (Evans, 1983:33, Van der Walt, 1988:21-23). A wife was, for example, literally locked in the house and was to be seen in public as little as possible in order to prevent her from seducing innocent men. Furthermore, the Talmud, which is the primary source of Judaic religious law, warns that men should not converse too often with women, even with their wives as this would ultimately make them fall into immortality. In short, a woman's sole role on earth was to fulfil her husband's destiny. She was to be a willing servant delighted to bow humbly to his desires and wishes (Crump, 1987:23).

Bonvillain (1998:230) points out that traditional Judaism, similar to Hinduism, contained themes of purity, pollution and of dangers to men posed by contact with women. Menstruating women were also considered unclean and contaminating. At the end of each menstrual cycle, a woman had to take a purifying bath in order to clean herself and return to normal life.

In the synagogue, the traditional place of worship, there was also strict gender separation. This, according to Evans (1983:35) was probably an extension or consequence of the belief in the contaminating and seductive influences of women. As far as Judaism is concerned, there is no doubt that the place of the woman was not equal to that of the man. Women were subordinate and inferior to men in religion, in society in general and also in the home and family (Evans, 1983:36-37).

### **1.1.3.3 Christianity**

Although women played a very important role in the development of Christianity, this religion, like most of the ancient religions (particularly Judaism from which it arose) appears to have played a role in the subordination of women (Bebel, 1988:24). Walun (1977:126) notes that even the parables, stories and teachings of the Judeo-Christian tradition, perpetuate gender-role stereotyping.

Moltman-Wendel (1982:7-8) argues that the Bible was written or at least given its final form in a predominantly patriarchal culture. It contains a number of sexist remarks, which might be interpreted as suppressive to women. For example, in St Paul's letter to the Ephesians (5:23-24), wives are urged to "subordinate themselves to their husbands for the husband even as Christ is the head of the church". Those who interpret this biblical injunction or text for a wife to submit to her husband, often misuse the Bible to justify their actions.

The church's position, often consistent with that of various cultures worldwide is particularly evident in its emphasis of the biblical story of the creation of humankind and the way it is interpreted. In Genesis (2:7, 18, 21-23) the creation

story that is taught is:

the Lord God formed man (Adam) of the dust of the ground and breathed into his nostrils the breath of life,... Also, Adam said, “this is now the bone of my bone and the flesh of my flesh, she shall be called “Woman”, because she was taken out of me.

The most popular interpretation of this text is that the woman, having been made after the man and out of a part of his body, was designed to serve man, as man serves God. To confirm this view, the Judeo-Christian creation story in 1 Corinthians (11:8-10) accordingly states: “...for a man did not originally spring from a woman, but a woman was made out of a man and man was not created for a woman’s sake, but a woman for a man’s sake”.

Bonvillain (1998:233-234) mentions that the Christian doctrine too, has at various times in history, been greatly concerned with the notions of danger derived from women’s sexuality. Although strict seclusion and physical separation is not part of Christian practise, visions of women as inherently evil, lustful and destructive are encoded in numerous teachings. The sin associated with Eve is one of Christianity’s dominating themes. In Genesis (3:16, 20) verses such as: “I will increase your labour and your pain and in labour you shall bear children and you shall be eager for your husband and he shall be your master” reinforce the subordinate role of women.

According to Walun (1977:130) there are many elements in the religious heritage of Christianity favouring different gender roles and expectations for men and women. He, however states that these attitudes are understandable in that the events and individuals described in the Bible were themselves located within patriarchal societies which were imbued by a set of beliefs about the natural order of things. Women were defined primarily in terms of their sexuality, for example virgins, wives, mothers, concubines (an unmarried woman living with a man as his wife) and prostitutes, whilst men were defined in a wider diversity of roles such as kings, soldiers and priests.

According to Rikyard (2000:1) Christianity today still harbours attitudes and practices that reflect a perception of women as the subordinate or inferior gender. In support of this he notes that in a Christian wedding the veiled bride is escorted to her groom to be given away by her father as if she were his property.

#### **1.1.3.4 Islam**

Islam doctrine in part developed from prior teachings derived from both Judaism and Christianity. Bonvillain (1998:231) postulates that the subordination of women in the Islamic culture was often severe. Patriarchal control was exerted on women in order to mute their sexual desires and counteract dangers imposed by contamination from women. The custom of *pardah* (seclusion of women) was basic to Islamic practise. Women were most of the time asked to stay in separate quarters within the house, away from contact with men. The reason being that according to Islamic belief, women were by definition impure. Only chaste women (those who were virgins) were said to be pure. Once they had intercourse, they lost, according to this religion, the ability to control their sexual impulses and had to be controlled by men. It was believed that a woman's sexual fidelity was only assured if she was a virgin.

Islam, which is the third of the so-called Abrahamic religions, the other two being Judaism and Christianity, prides itself in its detailed injunctions granting women rights such as inheritance, ownership of property, divorce and the like. However, in Chapter 4 of the Holy Qur'an, entitled "Women", it is written that the daughter's share of inheritance is only half of that of a son's (Chapter 4:11). Presumably this is because a son as a male has more responsibilities as an actual or future head of the family. It also states that men are in charge of women, because Allah (God) had made one of them to excel the other (that is women) because they spend most of their property for the support of women (Chapter 4:34). In this verse men are also permitted to beat their wives if they are disobedient. These verses did accord women a subordinate role *vis a vis* men in Islamic practice.

#### **1.1.4 THE POSITION OF WOMEN DURING THE MIDDLE AGES AND UP TO THE TWENTIETH CENTURY**

The position of women during the middle ages and up to the twentieth century will now be discussed.

##### **1.1.4.1 The middle ages (1000 AD to the 16th century)**

The position of women in Europe during the Middle Ages was so debased that men were advised from the pulpit to beat their wives and the wives were to kiss the rod that beat them (Chambliss, 1954:255). A woman was considered a weak vessel in herself, given to sin and a source of evil. The Church insisted on the wife's subordination to the husband. The husband was to a wife as god was to him (Painter, 1970:121). The household was the basis for production and although women played an important role in this, very few if any, escaped total subjugation to their husbands. Thus, women were responsible for the procreation of legitimate offspring. The church, courts and community therefore closely monitored the sexual behaviour of women in order to ensure female fidelity and legitimacy of the husband's children (Donat & D'Emilo, 1992:16). It is evident that the value of women in society depended on their ability to marry and give birth to legitimate heirs. Women's virginity increased their chances of marriage in a respectable family. However, if this purity was violated through an act of rape, they were not allowed to get married and were seen as a burden to their families.

According to Johnson and Sigler (1997:6-7) traditional attitudes regarding violence against women and the status of women were also dominant. For example, rape was viewed as an expression of male power and domination and was regulated by the courts and the community in order to maintain power over women rather than to protect them from being violated. The social class and marital status of women were important determinants of whether or not a rape case would come before the court. Rape cases in which the assailant's social class was lower than that of the victim, or those cases in which the victim was married and physically resisted the attack, were the ones most likely to come

before the court. It was also necessary to show that the victim did not consent to the act of rape, meaning that she did not voluntarily engage in a sexual act with a man other than her husband. If she could not prove her resistance, she was then punished for the rape (Donat & D'Emilo, 1992:18).

#### **1.1.4.2 The nineteenth century**

According to Crump (1986:23), the situation of women deteriorated even further during this century. Old prejudices, which were held against women in the 18th century, still persisted and women were regarded as irresponsible minors. Furthermore, as the Industrial Revolution of the 18<sup>th</sup> century continued to develop, the husband became a regular wage earner and therefore controlled the family finances, which put him in a position to exercise control over his wife. Women were not allowed to work outside the home and they assumed responsibilities of caring for children as well as preparing food for their husbands (Crump, 1986:23). They were completely financially dependent on their husbands.

As the 19<sup>th</sup> century progressed, women who belonged to the middle and upper classes were allowed to work. Women with a poor social status, however, constituted a source of cheap labour. Their lives were characterised by numerous responsibilities namely, bearing children, cooking and cleaning inside the home. They also often had to work outside the home such as in the garden and fetch wood from the forest. Unmarried women were allowed to get an education, with only a few succeeding in carving careers for themselves. This coincided with the development of the need for clerks, shop assistants, teachers as well as nurses. Consequently, a new view of women started to develop (Crump, 1986:23).

As a result of this development, community controls on women began to relax as they were allowed to make choices. Women could now make decisions which included amongst others where to work and to further their studies. This freedom had its own peculiar risks and vulnerabilities. Women who worked outside the

home had more opportunities of coming into contact with other than their husbands. While no extra-marital sexual relationships might necessarily have developed, a particularly insecure or suspicious husband could harass and intimidate his wife with allegations of infidelity. On the other hand, as she would invariably have male supervisors or superiors, she could be subjected to undue harassment given the prevailing notions of female inferiority. The seeds of sexual harassment in the workplace, which became a major issue in the 20<sup>th</sup> century, were probably sown during this time (Crump, 1986:24).

### **1.1.4.3 The twentieth century**

In viewing the plight of women in this century, the researcher will now focus on the position of women in South Africa (SA) as it is of particular relevance for the present study.

#### **1.1.4.3.1 The position of women in South Africa**

Prior to 1994, the legal codes of South Africa categorised people as African, Coloured, Indian and White. Those who were not white lived in a country that persecuted them for the colour of their skin, denied them job and educational opportunities on the basis of their race and ensured that their access to housing, health services, transport and economic opportunities was limited (Msimang, 2001:3). Racism under apartheid was both informal (everyday practice) and formal (e.g. laws designating areas where non-whites could and could not live, banning interracial sex and barring employment of non-whites in certain positions). The system also had profound effects on the private lives of women. For example, what was possible both in the home and in public was limited for many women by the conservatism of a patriarchy that was encouraged by the violence, and rigidity of the apartheid state.

While women in South Africa still have to contend with peculiar gender-related prejudices that often have their origins in the cultural past, the majority face additional discrimination based on class and race, as members of disadvantaged groups, ethnic minorities within their own areas as well as citizens of the

underdeveloped world. Although these three tiers of oppression (i.e. gender, class and race) may be linked, discrimination on the grounds of gender is often the starting point (O'Connell, 1993:4).

Throughout history, women have been perceived to be inferior to men and have been assigned lesser roles than those of their male counterparts. For a long time, men symbolically and ideologically structured the South African society as women's roles were defined by men (Lemer, 1989:28; Rissik, 1993:4).

Even today specific gender roles are allocated to men and women within each society. Men and women are also educated and conditioned according to these expected roles from birth (O'Connell, 1993:3). Invariably women have the primary responsibility of caring for children, the elderly and other family members who are ill or disabled. This usually brings with it a range of domestic obligations, which include inter alia growing, buying and preparing food as well as washing and cleaning. Furthermore, it is women who maintain close ties with other family members, organise social functions like weddings and run community health-care initiatives (O'Connell, 1993:5). On the other hand, men are expected to display traits or behaviours that are regarded as masculine such as aggressiveness, ruthlessness, competitiveness and dominance.

Women and men are thus expected to fulfil certain roles. Roles assigned to men and women alike are imbued with certain values such as prestige or perceived importance, which confer differential rights and power. O'Connell (1993:4), however, notes that, if all roles were regarded as being of equal merit by society and open to both genders, a division of roles would not be necessarily problematic. However, as roles differ, this leads to gender constraints which are inevitable in employment and education sectors.

Although the situation may be changing for women in the labour force, they by and large still predominate in the lower paid sections of formal employment (Msimang, 2001:4). For example, most women occupy positions, which though important to societal welfare are not regarded as prestigious such as nurses,

social workers, school teachers and clerks or assistants. Lower educational and training qualifications coupled with family obligations and cultural constraints, make it difficult for some women to obtain well-paid employment. However, even when they obtain such opportunities, women face gender-based discrimination in the workplace. Also, even if they earn the same salary, women may still be perceived as “minors” (Lemer, 1989:30; O’Connell, 1993:4).

South Africa, with its many ethnic groupings provides an excellent example of the homogeneous effects that socio-cultural factors exert on the position of women. South African women come from a variety of cultures, creeds and races. They are part of a population that is a mixture of different tribes of many different African ethnic groups, hosts of European immigrants of various nationalities and a number of different cultures from Asia. As a result, women in all sections of society have to juggle with different values and expectations (Rissik, 1993:9). While women suffer under patriarchy, women suffer differently depending on their race, class, religion and ethnicity. Although apartheid was primarily a racial ideology, it intersected with conservative class and gender ideologies in ways that made life much easier for white women than for black women (Msimang, 2001:20). On the other hand, South African women hold the spiritual and cultural values, which could be West European, Muslim, Hindu or African. In addition, they also face the harsh realities of a fast-growing westernised society that forces them to change age-old customs and roles. The unique positions of African, Coloured, Indian and White women in South Africa are discussed below.

- **African women**

African women form by far the largest proportion of the female population in South Africa. Their participation in the workforce has over a century been indicative of the gender division of labour within the home. As race was so intertwined with poverty, these women participated in the workforce in significantly higher numbers than white women did. The most common employment of black women was in the domestic sphere, as domestic workers. They also occupied positions as cleaners and tea ladies in office buildings.

Others were employed as farm labourers who worked alongside their husbands but were paid less because they were women (Rissik, 1993:9).

Over a century ago these women lived in rural areas with their husbands and families. However, no matter where women lived and/or worked, they were primarily held responsible for the family's health, wealth and happiness. Ndlangisa (1992:3) notes that a woman's most important traditional role has been the dissemination of culture through mothering. Attending to the family needs, caring for the husband, rearing children and ensuring good neighbourliness have been African women's first priorities.

Traditions played a very important role in social control in the tribal hierarchy (Rissik, 1993:61). Black women were subordinate to men within a wider kinship system with the chief as the controlling male (Brozzolli, 1983:152). The patriarchal system, which is commonly found in the whole of Africa, is also prominent among black groups in SA. Before marriage, black women were to be under the authority of their fathers or male guardians and later, when they got married, that of their husbands. Women had little or no say in matters pertaining to their marriage. The oldest tradition that centres around African women, the custom of *lobola* (the payment of a bride price which involves negotiations between two family representatives) meant that the marriage was an agreement between two families and not two individuals. Furthermore, the bride had no say in the choice of a marriage partner. It was therefore, common to find couples that were total strangers up to the moment they got married (Chinkanda, 1992:227).

The system of *lobola* gave the husband and his people the right to claim a woman as theirs. Its effect among the Zulu women is described by Nene (1988:12) as follows:

In exchange for the livestock paid, married women were expected to render life-long services to a wide circle of kin, to move away from their families of origin as a matter of tradition and to settle within easy reach of the husband's people, bear and rear children.

Among the Pondo tribe, a bride was subjected to strict control during the early years of her marriage. She was not allowed to have her own house. Therefore, she had to live with her mother-in-law who would subject her to various forms of cruelty such as succumbing to physical and mental abuse from her husband without lodging any complaints (Chinkanda, 1992:236).

With regard to domestic relations, *lobola* gave men the right to enforce authority even by beating their wives. However, such victimisation did not manifest itself in physical injuries only, because wives were also subjected to marital rape, wherein a husband would force himself sexually upon his wife. In spite of the occurrence of such victimisation, the understanding of the husband's role in a customary union meant that his right to treat his wife as he deemed fit remained unchallenged (Chinkanda, 1992:236).

The growth of new ideas brought about by education together with economic and political pressures have resulted in a change in some practices. For example, the *lobola* system or bride wealth has declined with the rise of urban, western values, which came with industrialisation (Schurink, 1992:231). Ironically, women now tend to be worse off in terms of the customary law than before industrialisation. According to Bronstein (1998:340) customary law stipulates that wives (especially rural women) do not have the power to prosecute their own divorces, they do not negotiate the bridewealth and may not tender its return. Whether the bride wealth has to be returned on divorce depends on who is at fault, but the wife is vulnerable to pressure to stay in her marriage if her family cannot return the *lobola*.

Crump (1987:15) also found that women, who have experienced a measure of freedom before marriage, were especially reluctant to play the part of subservient brides. Many prefer having children out of wedlock. Also, many, finding it difficult to work and look after their children, often send their children away to stay with grandmothers in the rural areas. In general, many more African women are becoming westernised and are seeking emancipation from some of the traditional restrictions. Although many are still concentrated in nursing and

teaching, increasing numbers of women are playing leading roles in government and the private sector such as corporate businesses.

- **Coloured women**

Coloured women in South Africa have experienced much of the same oppression as black women (Rissik, 1993:71). They were also subjected to racial discrimination in the labour market and education, resettlement against their will and to restrictions as to where they could live and work. Many coloured women work as unskilled workers, in the lowest paid jobs in industries that have traditionally employed large numbers of women. Examples hereof include the textile, garment, footwear and food processing industries, particularly in southern KwaZulu-Natal and the Western Cape. These women bear the responsibility of the domestic chores in their homes irrespective of whether they also carry the task of economically supporting their families (Hunt, 1991:3).

- **Indian women**

In the Indian community, girls had to stop going to school once they reached puberty and some were never sent to school. As late as 1972, only 42% of Indian girls proceeded to secondary level. Even now, whenever there is shortage of funds, it is the girl's education, which is sacrificed.

Crump (1987:24) argues that traditionally, among Indian women of Hindu faith in South Africa, a husband was seen as a teacher. He was also regarded as a god to his wife. However, a slow rebellion against these conditions is emerging as more women become educated. The educated women, for example, no longer believe that menstruation is defiling. The husband is no longer regarded as the god he was and younger women are exercising increased freedom in the choice of a marriage partner. More and more women are educated up to tertiary level. At the University of Durban-Westville, attended mainly by Indian students, the proportion of female students rose from 9,2% in 1962 to an estimated 74% in

2000. According to Rissik (1993:72), these women have a long road to travel before they can attain equality with their menfolk. Their position however is steadily improving.

- **White women**

White women were also excluded from most types of formal employment except for clerical and secretarial work. While this exclusion was not legislated, many white women were denied access to employment by conservative ideas within Afrikaans and English communities about women's place in the society (Rissik, 1993:8). Thus, white women's employment patterns mirrored their role in the family.

Msimang (2001:4) states that white women's aspirations and opportunities were limited by the policies of banks that would not allow married women to take out loans or open accounts without the permission of their husbands. Employers also fired women when they fell pregnant and the education system encouraged them to take courses in nursing or teaching rather than dentistry or other higher education courses. This varied depending on class and began to shift towards the 1980's as university enrolment evened out for white women and men and as career opportunities began to open up in a number of non-traditional disciplines. However, white women are still economically and politically disadvantaged in relation to white men (Msimang, 2001:5).

White, mainly Afrikaner women in South Africa have been the most advantaged among women of all racial groups by virtue of privileges gained from being members of the ruling class during the apartheid era (Rissik, 1993:69). A high percentage of these women are well educated usually to tertiary level. However, as women they are still a long way from being equal to men who usually run industries, the farms and churches. Life for non-professional or poorer white women is still not satisfactory as their roles are usually of a lower status (Rissik, 1993:69-70).

From the above discussion it is evident since early history women have been

subjected to a number of discriminatory practices both in the private and public spheres of their lives.

## **1.2 DEFINITION OF CONCEPTS**

It is important to describe the subject of interest in a study as well as various facets of the problem to be researched so as to explain the parameters of the study clearly. The following concepts used throughout the study will be defined and described, namely sexual harassment, rape, stranger rape, acquaintance rape as well as date rape.

### **1.2.1 SEXUAL HARASSMENT**

Bradenburg (1988:159) and Powell (1992:290) define sexual harassment as any attempt to coerce an unwilling person into a sexual relationship, or to subject to unwanted sexual attention, requests for favours and/or other undesired verbal or physical conduct of a sexual nature. According to Evans (in Theron, 1989:216), sexual harassment refers to “any repeated and unwanted sexual comments, looks, suggestions, or physical contact that one finds objectionable or offensive and causes discomfort”. Both these definitions can be criticised because they fail to address the criminal accountability aspect. Also no reference is made of the fact that sexual harassment involves issues of power wherein the abuser has a power advantage over the victim.

Quinna (1987:7) offers another definition and asserts that sexual harassers often use economic or social power to dominate their victims. According to him, sexual harassment can be seen as “any unwanted sexual attention ranging from leering, pointing, patting, verbal comments and the subtle pressure for sexual activity to attempted rape and rape”. However, for the purpose of the study, rape will not be included in the definition of sexual harassment. In this regard, Bouchard (1992:21) argues that when rape is included in the definition of sexual harassment it tends to lead to confusion. He therefore, defines sexual harassment as “any unwanted or inappropriate sexual attention which includes touching, suggestive gestures and it usually happens in situations where one

person (the harasser) has power or authority over the other person (the victim)". This definition recognises that in certain circumstances, there is a power imbalance and in some, a sexual relationship that could be considered a violation of professional ethics and as such constitutes sexual harassment.

Shoop and Heyhow (1994:2), Sutherland (1991:1) as well as Welzenbach (1986:4) offer a more comprehensive definition of sexual harassment and the role of power in sexual harassment situations. They define sexual harassment as unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature when

submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment; submission to or rejection to such conduct by an individual is used as the basis for employment decisions affecting such individual or, such conduct has the purpose or effect of increasingly interfering with an individual's work or performance or creating an intimidating hostile or offensive work environment.

The first section of this definition deals with what has become known as *quid pro quo* harassment. This occurs when specific employment opportunities or benefits are withheld as a means of coercing sexual favours. In other words, when an individual in a position of power, either explicitly or implicitly uses his or her authority to hire, fire, promote or allocate work to persuade an employee to engage in sexual requests. These activities can include complying with requests for dates or sex, being touched or fondled, or responding positively to sexual comments and flirtations (Welzenbach, 1986:4).

The latter part of the definition deals less explicitly with direct power relationships in employment by focusing on the work environment instead. If this is made unpleasant or uncomfortable for anyone on the basis of their sex or sexual preference, then it constitutes sexual harassment. This type of harassment, therefore, can include sexist or homophobic jokes or comments, unwelcome verbal and/or physical advances of a sexual nature, offensive sexual flirtations, graphic comments about an individual's body, sexually degrading words used to describe an individual and the public display of sexually suggestive objects or

pictures (Shoop & Heyhow, 1994:12; Welzenbach, 1986:4).

Sandler and Shoop (1997:4) define sexual harassment on campus as any unwelcome sexual advances and/or request for sexual favours when submission to such conduct is made explicitly or implicitly a term or condition of a person's academic advancement; such conduct has the purpose or effect of unreasonably interfering with a person's work or academic performance; or creating an intimidating, hostile or offensive learning or social environment. However, till (1980:7) defines sexual harassment on campus broader as the use of authority to emphasise the sexuality or sexual identity of a student in a manner which prevents or impairs the student's full enjoyment of educational benefits or opportunities.

Since the above definitions specifically deal with sexual harassment on campus and they encompass a wide variety of behaviours, they were particularly useful in constructing an operational definition for the current study. However, the following definition of Braine, Bless and Fox (1995:141) will also be used because it is short and to the point and it also accommodates all the criticisms levelled at the previous definitions. They define sexual harassment as "exposure to sexual advances in a situation when the submission or rejection to such conduct is used for academic or work performance of a student in an educational environment". For the purposes of this study the word, "student" refers to female students only.

**Sexual harassment** will thus be defined as any exposure to sexual advances in a situation where the submission or rejection to such conduct may increase, prevent or impair the student's educational benefits or opportunities.

### **1.2.2 RAPE**

According to Mauro-Cochrane (1993:18) one of the greatest obstacles to combating rape is that the court personnel sometimes doubt that rape actually occurred. Because there are many variables that play a role in rape, the solution seems to lie in formulating a concrete definition that will leave no room for doubt.

It is envisaged that such a definition should encompass all situations, environments, attackers as well as the type of force used. However, Mauro-Cochrane (1993:19) emphasises that a legal definition of rape must be considered at all times. In this regard it should be kept in mind that laws differ from one country to another and even in the same country such as the United States of America (USA) rape laws differ from one area to the next thus leading to problems in defining rape. On the basis of this, the researcher will consider the existing Criminal Procedure Act 51 of 1977 dealing with rape in South Africa. After this, the researcher will elaborate on the recommendations dealing with rape made by the South African Law Reform Commission in which a new legal definition of rape is advised. The new proposed draft Bill on Sexual Offences will also be discussed after which an operational definition of rape will be formulated.

The Criminal Procedure Act (Act 51 of 1977) currently distinguishes between two kinds of rape, namely statutory and forcible rape. Snyman (1999:424), the Unit for Gender Research in Law at Unisa (1998:104) as well as Vogelmann (1990:4) define forcible rape as the intentional, unlawful sexual intercourse with a woman without her consent. Bezuidenhout (1998:130) on the other hand defines statutory rape as sexual intercourse with a person under a specified age, even if she participates willingly. This age may vary from country to country but it ranges from 16 (for girls) to 18 (for boys) years in SA. Statutory rape is however not the focus of the study and thus warrants no further discussion.

The South African legal definition of rape can be described further according to its most important elements namely, ***mens rea* (intention)**, **unlawfulness**, **sexual intercourse with a woman** and **without consent**.

With reference to the above, **intercourse** is defined as any degree of penetration by the male organ into the woman's vulva or labia (Burchell & Milton, 1997:491). The rapist does not necessarily have to achieve orgasm or ejaculate (Vogelmann, 1990:4). The slightest penetration into the victim's labia by the male organ constitutes rape. It is not necessary that there should be an emission of the semen or, in the case of a virgin, that the hymen should be ruptured or that the

woman becomes pregnant. The offence thus consists of the violation of the victim and not on the satisfaction of the rapist (Snyman, 1999:424). Furthermore, the acts of forceful oral sex or sodomy are not considered rape. These acts are criminalised under indecent assault legislation (Snyman, 1999:425). If a man tries to penetrate the woman with his penis and cannot because she resists him or gets caught in the act, he will be prosecuted for attempted rape. However, if he penetrates the female in any way, which does not involve his penis such as using a bottle, knife or any sharp object, the act will be regarded as indecent assault.

It should be noted that when a woman consents to the act of sexual intercourse, rape cannot occur (Burchell & Milton, 1997:492). The element of **consent** is in most cases defined by the male's perception as opposed to the female actually consenting to intercourse. In this regard, the law has accepted that the manifestations of resistance can take on many forms. These may include physical resistance where the male overpowers the female. This symbolises lack of consent. It is also accepted that when a woman submits to intercourse through intimidation or fear, she also has not consented to intercourse (Ross, 1993:10). The South African law also provides an irrebutable presumption in which a girl who is 12 years and younger is incapable of consenting to sexual intercourse. However, when the girl is under 12 years this does not mean that a man will be prosecuted for rape. This is more applicable in situations where there may be a lack of required intent upon conviction (Unit for Gender Research in Law, 1998:105).

Whenever a man has sexual intercourse with a woman without her consent, even if there is no use of physical violence such as the use of a weapon like a knife and the woman does not suffer any visible wounds such as cuts or bruises, the act is defined as rape. The actions of the man still constitute rape even if the woman did not fight her attacker off. What is of importance is that it should be clear that she does not agree or has not agreed to have sexual intercourse with him.

The absence of consent in most cases relates to **unlawfulness**, but depending on the case, it is also a separate requisite that the state has to prove it beyond reasonable doubt. It is also important to clearly distinguish between consent and submission. Snyman (1999:426) singles out five instances where consent cannot be admissible. Consent is firstly excluded if the woman is fearful of the threats or violence used thereby submitting to intercourse. Having intercourse when a woman is asleep is a second instance. Thirdly, a woman who is under the influence of alcohol or drugs cannot give consent as she is not in control of her mentality. Fourthly, if a woman is mentally ill to such an extent that her reasoning capacity is incapable of consenting to intercourse, consent is excluded. Lastly, consent obtained by fraudulent means such as a doctor who during the course of examining his patient, has intercourse with her as a cure to her condition, is also an instance where consent cannot be admissible.

In the case of *mens rea*, it must be proved that the man knew he was committing rape. In the context of rape, the state of mind is judged from the perspective of the male. Therefore the court analyses the male's perception of consent, as opposed to the woman's actual consent (Hunt, 1990:435). If he generally believes that the woman consents, even though this belief may be unreasonable, he lacks intention. It may be found that the accused thought that the complainant consented, in which case there is no intent or *mens rea*. Furthermore, rape occurs according to the law when the woman is made to submit to intercourse through force, fear or fraud, or due to the woman's incapacity to consent.

In terms of the South African definition of rape, the act can only occur between a man and a woman. From this it follows that a man cannot be raped and a woman cannot commit rape. However, a woman can assist the rapist, which means that she can act as an accomplice.

The reputation of the woman is irrelevant and therefore it makes no difference whether she is a prostitute or a promiscuous woman. As long as she has not consented to the sexual intercourse, the act is considered rape. The victim's version of the alleged rape may not be believed especially if she is a woman of

questionable morals (Unit for Gender Research in Law, 1998:105). In spite of the Criminal law and the Criminal Procedure Amendment Act (Act 39 of 1989) which prohibits the questioning of a woman about her previous sexual experience with persons other than the accused (unless reasons for its admissibility are provided in camera), the victim's version of the alleged rape may not be believed if she is a woman with questionable morals.

The South African legal definition of rape has been subject to a number of criticisms (Ross, 1993:10; Vogelmann, 1990:3). According to Vogelmann (1990:3) this definition limits rape to the penetration of the vagina by the penis. This implies that other forms of sexual contact, which may violate the victim's body, are ignored. Such acts include oral or anal penetration as well as penetration using objects. These are acts which when not consented to by the woman are referred to as indecent assault. In addition to this, when a man is convicted of these offences, a lower sentence or penalty than that of rape may be given. Moreover violent sexual assaults between people of the same sex are not recognised as rape. This may pose a problem, as same sex couples may not get an appropriate conviction for the crimes they have committed. Another major limitation of the definition is that rape is defined solely as an act, which may be committed by a man against a woman. Consequently, law does not protect male rape victims and thus female offenders are not liable for prosecution (Ross, 1993:10).

Following upon the recommendations of the South African Law Reform Commission in the Sexual Offences Bill that was introduced to parliament in 2003, the legal definition of rape will, in a number of aspects, undergo significant reforms. This is due to the fact that the proposed Sexual Offences Bill suggests the broadening of the definition of rape to include "any act committed when a person intentionally and unlawfully commits an act of sexual penetration with another person, or when a person compels, induces or causes another person to commit such an act" (Sexual Offences Bill, 2002:33).

It can thus be deduced from this proposed definition that the words sexual

intercourse is replaced with the words sexual penetration. This sexual penetration is broadly defined by the Commission as “any act which includes penetration to any extent whatsoever by a penis or part of the body of another person, or any other part of the body of an animal, into the vagina, anus or mouth of another person” (Sexual Offences Bill, 2002:33). This means that oral, anal and/or vaginal penetration or even simulated sexual penetration constitutes rape. Also, in terms of the proposed Bill, the Commission proposes instances in which sexual penetration can be regarded as unlawful namely, in coercive circumstances, during false pretences as well as in cases where the person is unable to ascertain sexual penetration (Sexual Offences Bill, 2002:33).

Coercive circumstances include the application of force, threats and indirect or direct abuse of power or authority to the extent that victims cannot resist such an act or express their unwillingness to participate in such an act. This might be applicable to female students in tertiary institutions. Sexual relationships, for example, between students and lecturers involve power relations who might mean that refusing any act of sexual penetration can have serious consequences for the student such as poor marks and/or forfeiting a scholarship or bursary.

False pretences or fraudulent means include circumstances in which a potential victim is led to believe that an act of sexual penetration might be beneficial to her physical, psychological, social or educational or spiritual health. Thus, female students might in this case believe that succumbing to an act of sexual penetration may be a way of obtaining higher marks. Consequently, they may tend to believe that sex can be exchanged for favours.

If a person has sexual relations with a woman who is either sleeping, under the influence of alcohol or drugs, undergoing treatment or is unconscious, it also constitutes rape. This is due to the fact that these circumstances impair the individual’s judgement and the individual cannot be in control of their own mental faculties. This factor is especially important given the fact that alcohol and drug abuse especially on campus is directly linked to an increased risk of personal victimisation (DeKeseredy & Schwartz, 1997:100).

In terms of the current definition of rape, the state has to prove beyond reasonable doubt that the woman did not consent to sexual intercourse. As mentioned earlier, this creates the impression that victims of rape are put on trial to prove the absence of their consent to sexual intercourse. The SA Law Reform Commission proposes that the absence of consent to sexual intercourse should not be included as an element of the offence and should be replaced by coercive circumstances. Accused individuals can still raise consent as a justification for their unlawful conduct, but will carry the burden of proof in this regard (Sexual Offences Bill, 2002:38).

Based on the above discussion, **rape** in the present study will be operationally defined as “an intentional and unlawful act of sexual penetration that is accomplished in coercive circumstances, during false pretences or when the victim (female student) is unable to ascertain penetration”.

The next section will focus on the definitions of various types or forms of rape based on the relationship that existed between the victim and the perpetrator prior to the rape.

#### **1.2.2.1 Stranger rape**

According to Lena and Lena (2001:1) stranger rape occurs when victims do not know their attackers. This definition is not adequate for the purpose of the study as it does not state the unlawfulness of the act. It also neglects to acknowledge the various effects this action might have on the victim.

According to another definition, stranger rape may be defined as non-consensual or forced sexual intercourse on a woman who does not know her attacker (Landmark first women’s definition of rape in international law, 1998:1). Although unlawfulness is illustrated in this definition, it must however be reiterated that men are victims of rape as well. However due to the fact that only female students are included in the study, **stranger rape** will for the purpose of the study

be defined as an intentional and unlawful act of sexual penetration by an attacker not known to the student. The same elements stated in the definition of rape above are applicable here.

#### 1.2.2.2 Date and acquaintance rape

The terms “acquaintance rape” and “date rape” are often used interchangeably and can be defined as sexual abuse, not necessarily violent, perpetrated by someone known to the victim, often a peer in a trusted social relationship (Lena & Lena, 2001:3). Based on the fact that various researchers such as Bohmer and Parrot (1993:4) as well as Reid (1988:234) distinguish between date and acquaintance rape, these two concepts will be, for the purposes of the study defined separately.

According to Reid (1988:234) date rape refers to forcible sex when the offender knows the victim. This implies that the victim has agreed to some social interaction but not sexual intercourse. Benson (2001:1) highlights the fact that date rape is a term, which usually describes the context in which rape occurs. However, it also implies a situation where the victim and the offender are acquainted with each other.

In the light of this, Bohmer and Parrot (1993:4) define date rape as a rape that occurs while the victim and the assailant are on a date. In this regard the two parties can meet at a specific place for example during university related activities.

For the purposes of the study **date rape** occurs when a date forces himself sexually upon a female student.

**Acquaintance rape** is inferred when the victim and the assailant know each other. Rape by a friend, spouse, lover, co-worker or merely an individual the victim knows slightly, might be considered acquaintance rape (Bohmer & Parrot, 1993:4; Bopp & Vardalis, 1987:12). The researcher will use this particular

definition because it suits the purposes of the study.

It should however be noted that the difference between date and acquaintance rape lies in the type of relationship the couple had prior to the rape. With regards to date rape, a more defined relationship, which may be defined as a dating relationship, exists between the two parties. Whereas in the case of acquaintance rape a male and a female may, for example be classmates.

However, Parrot and Bechhofer (1991:213) point out that it is not always possible to categorise all incidents of forced sex as acquaintance, date or stranger rape. For example, how will an act be classified if the female met her assailant only a few minutes prior to the rape? This case may not fit into either a stranger or acquaintance rape. Be that as it may, it is useful to name these types of rape because the dynamics of rape and consequences thereof are different.

### **1.2.2.3 Gang rape**

Gang rape also known as the “pack rape” or “bang rape” is defined by Encyclopedia (2004:11) as an act, which occurs when a group of people participate in the rape of a single victim, usually a gang of males against a female. This definition fails to illustrate unlawfulness.

Another definition which is provided by the Cambridge Advanced Learners Dictionary (2003:1) defines gang rape as a form of rape, which occurs when a group of men use violence or threatening behaviour to have sex with a victim. Due to the fact that this definition illustrates unlawfulness and that only female students are the focus of the study, an operational definition of gang rape will be formulated as follows: gang rape is defined as form of rape which is perpetrated by a group of males using violence or threats, on a female student.

## **1.3 STATEMENT OF THE PROBLEM**

According to Schuler (1992:1), the victimisation of women is a pervasive problem world-wide. It is a well-known fact that violence against women is commonplace

and that it is perpetrated on young and old alike. This victimisation can take various forms namely, physical, sexual, verbal and emotional abuse. It was however, the feminist movement with the support of the media that put the issues of especially sexual abuse of women and girls firmly on the social agenda. This includes the litany of abuses from repeated assaults to rape and murder.

The findings of the National Progressive Primary Health Care Network (NPPHCN) in South Africa confirm that violence in youth relationships between the ages of 10 and 25 years is an everyday, expected and accepted experience for many females (Strebel & Foster, 2000:11). Conco (1996:22) states that in a series of workshops held with young people in the Mpumalanga Province, it emerged that men use violence, in the form of gang rape as punishment for women who step out of their traditional roles. Among these young victims could be university students who constitute the focus of the present study.

University campuses are hosts to a large concentration of young women who face a great risk of being raped and subjected to various forms of sexual assault (Fisher et al., 2000:2). This is the case because young women come into contact with young men in a variety of public and private settings on campuses. Osborne (1990:637) describes the university environment as a “chilly climate” emphasising that while both men and women are educated at the same universities, the social environments they inhabit differ significantly. Various studies conducted by Craig (1990), Himelein (1995), Dekeseredy (1988), Dekeseredy and Kelly (1993), Dekeseredy and Schwartz (1997), Koss, Dinero and Cox (1988) as well as Osborne (1990), indicate that victimisation of female students on campuses range from sexual harassment, attempted rape to rape. However, most violence is perpetrated by acquaintances (Koss, Dinero & Cox, 1988:184).

A study conducted at the University of Western Cape in 1987 revealed that female students are often victims of rape on campuses. Two cases of rape in the male hostels were, for example reported at this institution in 1987. Another incident was reported at the Rand Afrikaans University where a female student

was repeatedly raped by her date on campus.

In addition to rape, sexual harassment also seems to be pervasive on South African campuses. In a workshop held at the University of Cape Town (UCT) incidents involving student-student (peer harassment), student-staff and to a lesser degree staff-staff harassment were reported (Braine et al., 1995:142). However, even though these studies were conducted, Twigg (2003:86) argues that there is a great difficulty in determining the true extent of sexual harassment and rape on South African campuses. She mentions the unavailability of data bases on sexual harassment and rape and that in some institutions nothing is put in place to measure the incidence of these crimes. In addition to this, many students do not know where to report rape or sexual harassment and as such choose not to report at all. In some cases victims also do not characterise their sexual victimisation as a crime due to a lack of clear understanding of the legal definition of sexual harassment and rape. They also do not report it because of fear of embarrassment, not wanting to label someone they know as a rapist and blaming themselves for the assault.

However, when such incidents are reported to campus authorities, the victims are often faced with humiliating and hostile attitudes from co-students and campus administration (Rape, a new campus culture, 1992:34). For example, the administration at the Rand Afrikaans University responded to the above-mentioned date rape case by commenting that “although rape is something terrible that has to be rejected, it remains a lady’s duty to make herself safe”. The administration went on to appeal to all female learners not to wear provocative or revealing clothing on campus (Ross, 1993:17). This leads to confusion as learners rarely know where to find help when they are confronted with such victimising situations (Rubin & Borgers, 1990:406). Therefore, many victims choose to remain silent and not to make official complaints.

It is important to note that at some universities the problem of sexual harassment and rape has become so severe that it limits women’s academic excellence. For example, at the University of the North, female students avoid studying in the

library at night or even attending seminars because they fear they might be raped or sexually harassed if they venture onto campus alone (Conco, 1992:14).

Vetton (2003:87) also highlights that “no national studies” have been conducted about sexual harassment and rape on campuses. She notes how this problem has been ignored because its publication could “tarnish the institutions’ reputation and image”. An incident at the University of Pretoria (UP) which involved an alleged gang rape of a victim who was an 18 year old girl at a men’s (Maroela) hostel, showed how incidents of rape could have a negative impact on the institution. In this case, the court due has acquitted the perpetrators to lack of evidence. However, drastic measures were taken to prevent UP from being seen as an institution in which incidents of sexual victimisation occur. These included an appointment of a new Hostel Head as well as the possibility of closing the hostel.

The researcher’s interest in the sexual harassment and rape of female students emerged from her work as a lecturer in Criminology, specialising in Victimology on both first and third year level at the University of Venda. Before presenting a lecture in a third year class on sexual assault, the researcher decided to give learners an assignment dealing with rape on campuses. Upon receiving the written assignments, the researcher became aware of various incidents of rape on campus, which were mentioned in these reports. Although this information came from secondary sources, the way these incidents were narrated aroused the researcher’s curiosity about the nature and true extent of these incidents. This led the researcher to ponder about the consequences these incidents might have on the victims and the realisation that this topic warranted some investigation.

In addition to this, in a subsequent lecture during which various types of rape and forms of sexual harassment were highlighted in class, the researcher noted the general level of ignorance that exists among learners regarding this topic. This conclusion was made based on the debate that ensued among learners who refused to acknowledge the fact that rape could occur between people who are

acquainted with each other or dating each other. It seemed that learners supported a number of stereotypes and beliefs such as that dating means that one should have intercourse with the partner, and that victims ask and provoke rape by visiting a man's apartment.

In light of the above, the researcher came to the conclusion that research about sexual harassment and rape could be of value to the university community at large as well as the society in general. By shedding light on the nature and extent of sexual harassment and rape, female learners could be advised about their vulnerability, who the likely perpetrators are as well as the high risk areas on campus. The university community, (management and administrators) could also potentially benefit by being aware of the dangers female learners are faced with and as such put programmes and safety measures in place or improve the already existing ones, in order to provide a safer environment for female learners. Lastly, society at large will be able to offer support to female learners who have been victimised on campus.

#### **1.4 AIMS OF THE STUDY**

In the light of the problem statement, the following aims are formulated for the study:

- To investigate the nature of sexual harassment of female students at the University of Venda
- To investigate the nature of rape of female students at the University of Venda.
- To examine the reactions and response of the significant others (family, co-students and administrators) after the incident.
- To determine the consequences sexual harassment has on the victims.
- To determine the consequences rape has on the victims.
- To get the opinions of female students regarding the prevention of sexual harassment and rape in tertiary institutions.

## 1.5 GEOGRAPHICAL DEMARCATION OF THE STUDY

Since the researcher is a lecturer in Criminology at the University of Venda it was decided to conduct the research at this university. The University of Venda at Thohoyandou in the Limpopo Province was founded in 1982. It is a historically black university catering for historically disadvantaged students. The student (which consists of about 5000) and staff population is relatively culturally homogeneous (mainly comprised of the Venda speaking people) and the institution is located in a largely rural setting.

## 1.6 PROGRAMME FOR THE REMAINDER OF THE STUDY

In order to achieve the aims mentioned in Section 1.5, the remaining chapters for the study are as follows:

- **CHAPTER 2:** Existing literature on female sexual victimisation
- **CHAPTER 3:** A comprehensive discussion of the theoretical framework
  
- **CHAPTER 4:** The methodological approach that is to be adopted to investigate female victimisation on campus
  
- **CHAPTER 5:** The analysis and interpretation of the collected data
  
- **CHAPTER 6:** Conclusions will be drawn and some recommendations will be made for future research